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2.16 Grievance

Saint Mary's College of California

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2.16 TENURED AND TENURE TRACK FACULTY GRIEVANCE

For the grievance process governing bargaining unit faculty members, see Article #19: Grievance and Arbitration of the Collective Bargaining Agreement.

2.16.1 INTRODUCTION

1. The grievance procedure provides an individual with faculty status a procedure by which to have his/her grievance heard in a fair, predictable manner which permits the participation of his/her colleagues. The goal of the procedure is to effect the timely and equitable settlement of the grievance.
2. The grievance procedure is used to settle disputes between faculty members and other faculty members or between faculty members and academic administrators. The following are grievable issues:

- a. alleged inadequate consideration and/or alleged violations of academic freedom by the Rank and Tenure Committee, the Provost, or the President in tenure and promotion recommendations and/or decisions (see section 2.16.3);
- b. alleged inadequate consideration and/or alleged violations of academic freedom in reappointment recommendations and/or decisions not involving the Rank and Tenure Committee (see section 2.16.4);
- c. all other grievances not involving the rank and tenure review process which allege errors in policies, errors in carrying out policies or procedures, or violations of academic freedom (see section 2.16.4);
- d. alleged violations of equal employment opportunity policies. (Cases of alleged harassment (other than sexual) or discrimination on the basis of race, color, religion, national origin, ancestry, marital status, gender, sexual orientation, age (40 years or older), medical condition, or physical or mental disability are dealt with under section 2.16.5.)

2.16.2 PROCEDURES THAT APPLY TO ALL GRIEVANCES

1. Grievances must be initiated in writing within twenty (20) school days of the alleged offense. For a definition of "school days" see section 2.16.2(9).
 - a. Grievances where neither the Provost nor the President is a party in the grievance are initiated in the Office of the Provost.
 - b. Grievances where the Provost is a party in the grievance are initiated in the Office of the President.
 - c. Grievances where the President is a party in the grievance are initiated in the Office of the President.
 - d. Grievances involving equal employment opportunity and/or the College's non-discrimination policies are initiated with the Associate Vice President of Human Resources, who also serves as the College's Title IX Coordinator. Complaints involving allegations of sexual harassment are reported to and investigated by the Associate Vice President of Human Resources (see section 2.9.3.1 Policy Prohibiting Discrimination, Harassment (including Sexual) and Retaliation).
2. The Provost or the President can designate another individual to receive grievances or to act in his/her place in discharging any responsibilities assigned to either of these parties under these procedures.
3. The faculty member initiating the grievance is responsible for presenting a clear, coherent, well-documented, well-argued case to the Committee. The Committee does not formulate the case for the grieving faculty member.
4. When filing a written grievance, the faculty member initiating the grievance must cite the *Faculty Handbook* section number under which he/she is grieving.
5. Whenever a faculty member is participating in the grievance process he/she may be accompanied or represented by one of his/her colleagues who serves without prejudice or fear of reprisal.
6. When required, written notification must be received by the school day indicated in the grievance procedure. Notification will be made by certified mail. All parties are responsible for providing accurate information to either the President or the Provost as to how they may be reached.
7. When deadlines are identified in the grievance procedure, the parties have until 3:00pm on the designated school day to complete the required activity.

8. If all parties to the grievance believe their time could be profitably extended beyond a time limit outlined in the grievance procedure, they can agree to an extension by defining it in writing before the original time limit elapses. Extension should be for no more than double the original time allocated for the activity, unless extraordinary circumstances occur such as prolonged illness or sabbatical leave.
9. All references to "school days" in the grievance procedures refer to days on which regular undergraduate scholastic year classes are scheduled (including the week of final examinations), according to the official academic calendar published in the *College Catalog*. This definition of "school days" applies to all faculty members regardless of the program in which they teach. In particular, undergraduate vacation days and the undergraduate summer vacation period do not count as school days even though faculty in some programs (e.g., graduate business, education, etc.) teach during these times.
10. A grievance will be considered beginning with Step I of the procedure and continuing in established order until a settlement has been reached or a decision has been accepted by all parties to the grievance or the last step has been fully implemented.
11. If a settlement has not been reached or a party to the grievance is dissatisfied with the decision made, the party may make an appeal which brings the case to the next step. A decision is final if it is not appealed within given time limits or if no further appeal can be taken under this procedure.
12. After commencement of a grievance procedure, additional grievances or alterations in the original grievance require that the procedure begin again.
13. Twelve faculty members are elected to the Grievance Committee. For those steps in these procedures that require the Grievance Committee, each party to the case can challenge two members within ten (10) school days of the actual notice of the composition of the Grievance Committee. Challenges are peremptory and without personal or professional prejudice. All five members of the Grievance committee must be present at deliberation meetings, and all five must vote. No abstentions are allowed. See section 1.7.4.1 (Grievance Committee) for a full description of how the Grievance Committee is constituted. In addition, in an academic year in which the number of concurrent grievances exceeds three, the chair of the Academic Senate has the discretionary power to enlarge the Committee from the alternates and runners-up from the previous two election years; the Committee is to be enlarged prior to the challenge stage.
14. A Grievance Committee member may serve on a maximum of two concurrent grievances.
15. At the conclusion of grievances involving the Rank and Tenure Committee, the chair of the Grievance Committee will meet with the chair of the Rank and Tenure Committee to discuss, without violating the confidentiality of the grievance process or the privacy of the individual(s) involved, the ways in which such a grievance might be avoided in the future.

2.16.3 GRIEVANCES ARISING FROM ALLEGED INADEQUATE CONSIDERATION AND/OR ALLEGED VIOLATIONS OF ACADEMIC FREEDOM BY THE RANK AND TENURE COMMITTEE, THE PROVOST, OR THE PRESIDENT IN TENURE AND PROMOTION RECOMMENDATIONS AND/OR DECISIONS

1. Grievances in which the Provost and/or the Rank and Tenure Committee arrived at a negative recommendation and where the President renders a negative decision are considered under section 2.16.3.1.

2. Grievances in which both the Provost and the Rank and Tenure Committee arrived at positive recommendations but in which the President renders a negative decision are considered under section 2.16.3.2.
3. Grievances in which a faculty member is not reappointed and where the non-reappointment does not involve the Rank and Tenure Committee are considered under section 2.16.4.

2.16.3.1 Grievances in cases of a negative rank and tenure decision by the Rank and Tenure Committee and/or the Provost and where the President renders a negative decision

See Figure 1 for a time line of this section.

1. If the President renders a negative decision in agreement with a negative decision by the Rank and Tenure Committee and/or the Provost, the faculty member may grieve the decision.
2. A written petition alleging inadequate consideration and/or a violation of academic freedom shall be sent to the President within twenty (20) school days of the postmarked date of the President's notification. Within five (5) school days the President will forward the petition to the Provost and to the chairperson of the Academic Senate who will refer it to the Grievance Committee. See section 2.16.2(4) for the requirements of written notification.
3. See section 2.16.2 for procedures that apply to all grievances.

Maximum time line since grievance occurred: 25 school days

Step I Informal Discussion

There is no informal step in this procedure. Informal consultation with the Provost takes place before the recommendations of the Rank and Tenure Committee and the Provost are forwarded to the President for his consideration. The filing of a grievance in cases of inadequate consideration and/or a violation of academic freedom in promotion and/or tenure decisions is immediately referred to the Grievance Committee.

Step II Grievance Committee Procedure

1. The chairperson of the Academic Senate will ensure that the Grievance Committee is constituted within ten (10) school days from the receipt of the request. The decision of the Grievance committee must be rendered within thirty (30) school days from the constitution of the committee.

If the complaint is received fewer than thirty (30) school days before the end of the academic year, the chairperson of the Academic Senate shall assign it to the Grievance Committee within twenty (20) school days after the commencement of the next academic year. The chairperson of the Academic Senate will insure that the committee is operative within ten (10) school days from assignment to the committee.

2. The Grievance Committee will determine whether the recommendation of the Rank and Tenure Committee and/or the Provost may have been the result of inadequate consideration of the case in terms of the rank and tenure standards of the College and/or a violation of academic freedom. The Grievance Committee should not judge the merits of the case. Rather, the Committee should decide whether on its face, a case for reconsideration by the Rank and Tenure Committee or the Provost has been made by the grievant.
3. The members of the Grievance Committee who are considering the case will have access to the confidential material which is available to members of the Rank and Tenure Committee and the Provost for the case being grieved. They shall also have

access to those portions of the minutes of the meeting(s) in which the grievant's case was discussed. At the sole discretion of the Grievance Committee, should the members find some information ambiguous or contradictory, the Committee may write to the individual(s) and solicit written responses(s) from the individual(s) who has information concerning the case for the purpose of clarification of ambiguous or contradictory information. The Grievance Committee is bound by the same confidentiality that binds the Rank and Tenure Committee.

4. The Grievance Committee shall consider only whether the information available to the Rank and Tenure Committee was adequate to support its decision and whether it was viewed only in the light of relevant standards.
5. The Grievance Committee will provide a written decision within thirty (30) school days from the constitution of the Committee. Copies will be provided to the faculty member, the Rank and Tenure Committee, the Provost, and the President of the College. If the Grievance Committee believes that the faculty member has no valid grievance, this shall be the final step in the faculty member's grievance.
6. If the Grievance Committee believes that the faculty member has a plausible case for reconsideration, it will direct the Rank and Tenure Committee (sitting at the time of the direction) and/or the Provost to reconsider. The Grievance Committee will indicate in what respects it believes the consideration may not have been adequate. If the Grievance Committee finds that information in a specific area was unavailable, insufficient, or inaccurate, it will direct that such information be supplied or corrected through the Office of Academic Affairs and be submitted to the Rank and Tenure Committee for its reconsideration of the case.
7. The records of the Grievance Committee will be kept in a confidential file in the Office of the President. These records will be kept separate from any personnel files.

Maximum time line since grievance occurred: 65 school days

8. If so directed, the Rank and Tenure Committee, and/or the Provost, will reconsider the case in light of the Grievance Committee's written decision and provide the President with their recommendations within thirty (30) school days of the directive. If the directive is submitted when there is no active Rank and Tenure Committee, the appeal will be held over until there is a new Rank and Tenure Committee. This new Rank and Tenure Committee, and/or the Provost, will consider the case and provide the President with their recommendations within thirty (30) school days after the committee is constituted.

Maximum time line since grievance occurred: 95 school days

9. The President will have ten (10) school days after receipt of the Rank and Tenure Committee's and/or the Provost's recommendations to render a final decision on the case. He will state his reasons in writing to the faculty member.

Maximum time line since grievance occurred: 105 school days

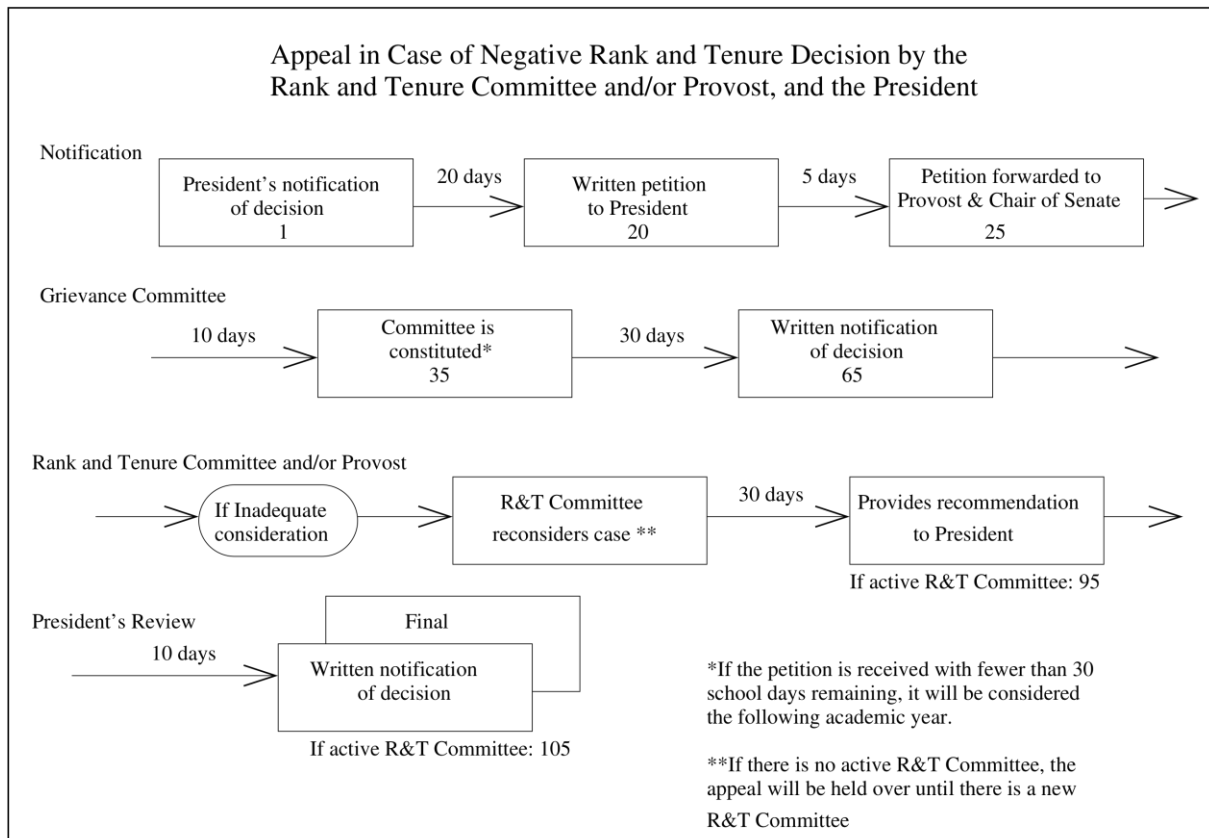


FIGURE 1. Section 2.16.3.1

2.16.3.2 Grievance in Case of a Negative Rank and Tenure Decision by the President in Opposition to a Positive Recommendation by the Rank and Tenure Committee and the Provost

See Figure 2 for a time line of this section.

1. If the President renders a negative decision in opposition to positive recommendations by both the Rank and Tenure Committee and the Provost, the faculty member may appeal the decision.
2. A written notification alleging inadequate consideration and/or a violation of academic freedom shall be sent to the President within twenty (20) school days of the postmarked date of the President's notification.

The written notification, at this stage, can be very brief, indicating the nature of the alleged grievance and the parties involved. See section 2.16.2(4) for the requirements of written notification.

3. See section 2.16.2 for procedures that apply to all grievances.

Maximum time line since grievance occurred: 20 school days

Step I Informal Discussion

1. Following the receipt of the written notification, the President shall call for a meeting between the parties to the grievance to take place not later than ten (10) school days after the written notification is received.

2. Successful resolution of the grievance through informal dialogue is encouraged. The formal grievance procedure is time consuming, costly, and often divisive and should only be used if informal channels of resolution have been exhausted.

3. In order to promote candor and informality and to maximize the opportunity for reaching a resolution, both parties to the discussion are encouraged to agree, at the outset, to sign a confidentiality agreement such as the following:

"Information that is shared during the informal discussion cannot be used by either party should the process proceed to the next stage."

If either party does not sign such an agreement, the discussions will be presumed to be open, that is, can be utilized by either party should the process proceed to the next stage. Both parties can, of course, at the conclusion of the informal discussion agree in writing to restrict the use in later stages of all or any parts of their discussions.

4. Informal discussions may continue until the appeal is settled or until the passage of ten (10) school days from the date of the first informal discussion, whichever occurs first, unless otherwise provided by all parties in writing. See section 2.16.2.6.

Maximum time line since grievance occurred: 40 school days

Step II Grievance Committee

If no resolution occurs at Step I, the faculty member may request a consideration by the Grievance Committee. The faculty member must give the chairperson of the Academic Senate, for delivery to the Grievance Committee and the President, a written complaint explaining specifically why the President's decision is believed to be erroneous. The complaint and request for consideration by the Grievance Committee must be received by the chairperson of the Academic Senate within fifteen (15) school days after the completion of the informal discussion. See section 2.16.2(4) for the requirements of written notification.

Maximum time line since grievance occurred: 55 school days

Step III Grievance Committee Procedure

1. The chairperson of the Academic Senate will insure that the Grievance Committee is constituted within ten (10) school days from the receipt of the request. The decision of the Grievance Committee must be rendered within thirty (30) school days from the constitution of the Committee.

If the complaint is received fewer than thirty (30) school days before the end of the academic year, the chairperson of the Academic Senate shall assign it to the Grievance Committee within twenty (20) school days after the commencement of the next academic year. The chairperson of the Academic Senate will insure that the Committee is operative within ten (10) school days from assignment to the committee.

2. The Grievance Committee shall then review the written complaint, recommendations of the Rank and Tenure Committee and the Provost and the statement of reasons by the President, and any other pertinent material that the Committee gathers. If the Grievance Committee decides by majority vote the consideration by the President was prima facie inadequate or a prima facie violation of academic freedom, it will ask the President to reconsider.

Maximum time line since grievance occurred: 95 school days

3. The President has ten (10) school days to reconsider his decision and inform the faculty member in writing of his final decision and supporting reasons. During this period the President may confer with either the grievant and/or the Grievance Committee. In cases involving inadequate consideration, the decision of the President

is final. In cases involving academic freedom only, the grievant may appeal the decision.

Maximum time line since grievance occurred: 105

Step IV Appeal to the Board of Trustees

1. In cases involving academic freedom only, a party dissatisfied with the decision rendered by the President may appeal to the Board of Trustees or to a committee thereof. The party must submit a written complaint to the chairperson of the Board of Trustees specifying why the decision of the President is believed to be erroneous and the redress sought. The chairperson of the Board of Trustees will forward a copy of the written complaint to the President. The complaint must be received within fifteen (15) school days of the decision by the President. See section 2.16.2(4) for the requirements of written notification.
2. The Board of Trustees or a committee created at the discretion of the chairperson of the Board will have forty-five (45) school days for deliberation and to render a final decision on the case. A copy of the decision shall be distributed to both parties.

Maximum time line since grievance occurred: 165 school days.

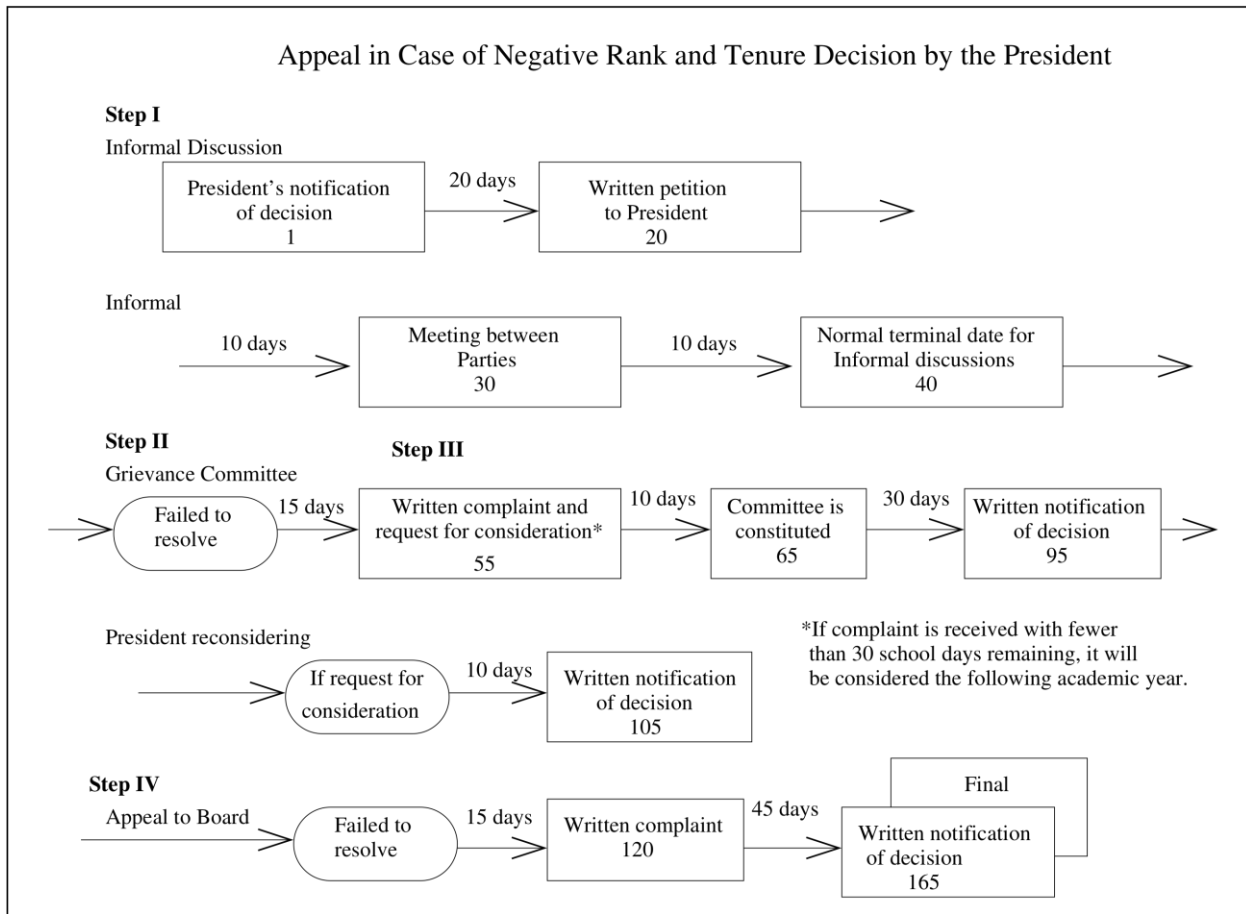


FIGURE 2. Section 2.16.3.2

2.16.4 GRIEVANCES THAT ALLEGE ERRORS IN POLICY NOT INVOLVING THE RANK AND TENURE REVIEW PROCESS, ERRORS IN CARRYING OUT POLICIES OR PROCEDURES NOT INVOLVING THE RANK AND TENURE

REVIEW PROCESS, VIOLATIONS OF ACADEMIC FREEDOM NOT INVOLVING THE RANK AND TENURE REVIEW PROCESS, OR INADEQUATE CONSIDERATION AND/OR VIOLATION OF ACADEMIC FREEDOM IN REAPPOINTMENT RECOMMENDATIONS AND/OR DECISIONS NOT INVOLVING THE RANK AND TENURE REVIEW PROCESS.

1. Grievances to which the President is not a party are considered under section 2.16.4.1.
2. Grievances to which the President is a party are considered under section 2.16.4.2.

2.16.4.1 Grievances To Which the President Is Not a Party That Allege Errors in Policy Not Involving the Rank and Tenure Review Process, Errors in Carrying Out Policies or Procedures Not Involving the Rank and Tenure Review Process, Violations of Academic Freedom Not Involving the Rank and Tenure Review Process, or Inadequate Consideration and/or Violations of Academic Freedom in Reappointment Recommendations and/or Decisions Not Involving the Rank and Tenure Review Process.

See Figure 3 for a time line of this section.

1. If the faculty member desires to file a grievance under section 2.16.4.1, he/she shall within twenty (20) school days of the alleged error or violation assure that a written petition is received by the Provost stating the grounds upon which the faculty member bases his/her grievance and the redress sought. If the grievance is against the Provost, the grievant will assure that within twenty (20) school days of the alleged error or violation the written petition is received by the President.

The written notification, at this stage, can be very brief, indicating the nature of the alleged grievance and the parties involved. See section 2.16.2(4) for the requirements of written notification.

2. See section 2.16.2 for procedures that apply to all grievances.

Step I Informal Discussion

1. Following the receipt of the written notification, the Provost or the President shall call for a meeting with the parties to the grievance to take place not later than ten (10) school days after the written notification is received.
2. Resolution of the grievance through informal dialogue is encouraged. The formal grievance procedure is time consuming, costly, and often divisive and should only be used if informal channels of resolution have been exhausted.
3. In order to promote candor and informality and to maximize the opportunity for reaching a resolution, both parties to the discussion are encouraged to agree, at the outset, to sign a confidentiality agreement such as the following:

"Information that is shared during the informal discussion cannot be used by the process proceed to the next stage."

If either party does not sign such an agreement, the discussions will be presumed to be open, that is, can be utilized by either party should the process proceed to the next stage. Both parties can, of course, at the conclusion of the informal discussion agree in writing to restrict the use in later stages of all or any parts of their discussions.

4. Informal discussions may continue until the grievance is settled or until the passage of ten (10) school days from the date of the first informal discussion, whichever occurs first unless otherwise provided by all parties in writing. See section 2.16.2(6).

Maximum time line since grievance occurred: 40 school days

Step II Written Complaint of Grievance

1. Within fifteen (15) school days from the terminal date of the informal discussion, the grievance and redress sought must be submitted as a formal complaint in writing to the Provost together with a copy to the other party to the grievance, who will then have ten (10) school days from the receipt of the copy to answer the complaint in writing to the Provost. If the Provost is a party to the grievance, the written complaint must be submitted to the President. See section 2.16.2(4) for the requirements of written notification.

The Provost, or in cases where the Provost is a party to the grievance, the President, shall then consider the written complaint and the answer to the complaint, together with any oral or written statements and other pertinent data he/she may seek or require, and make his/her decision in writing with a copy to each party to the grievance, not later than thirty-five (35) school days from the terminal date of the informal discussions. See section 2.16.2(4) for the requirements of written notification.

Maximum time line since grievance occurred: 75 school days

Step III Grievance Committee

1. A party to the grievance who is dissatisfied with the decision of the Provost or President and who desires the chairperson of the Academic Senate to convene the Grievance Committee, must give the chairperson, for delivery to the Grievance Committee, a written complaint explaining specifically why the decision is believed to be erroneous, and request consideration by the Grievance Committee. The complaint and request must be received by the chairperson of the Academic Senate within fifteen (15) school days after the decision by the Provost or President. The chairperson of the Academic Senate will insure that the committee be constituted within ten (10) school days from receipt of the request. See section 2.16.2(4) for the requirements of written notification.
 - i. If the complaint is received fewer than thirty (30) school days before the end of the academic year, the chairperson of the Academic Senate shall assign it to the Grievance Committee within twenty (20) school days after the commencement of the next academic year. The chairperson of the Academic Senate will insure that the committee is operative within ten (10) school days from assignment to the committee.
2. The Grievance Committee:
 - a. Shall ascertain that Steps I and II were unsuccessful in bringing about a settlement;
 - b. May at any time during the process:
 - i. Confer with any members of the College community appropriate to the case. Any person serving as a conferee serves without prejudice or fear of reprisal.
 - ii. Decline to review the case for jurisdictional reasons or because the grievance has become moot and shall submit a written report of the reason for refusal.
 - iii. Engage in additional fact-finding, suggest policy changes, and decide what redress, if any, is due to the grievant.
 - c. Shall render a decision in the case by means of a majority vote.
 - d. Shall preserve the confidentiality of the proceedings. Meetings are not public.
 - e. Shall deliver to the Office of the President the records of the Grievance Committee and all related documentation. These records will be kept in a confidential file in the Office of the President, separate from any personnel files.
3. The Grievance Committee must notify the parties of its decision within thirty (30) school days from the constitution of the Committee.

Maximum time line since grievance occurred: 130 school days

Step IV Appeal to President

1. A party dissatisfied with the decision rendered by the Grievance Committee may appeal to the President of the College. The party must submit a written complaint, specifying why the decision by the Grievance Committee is believed to be erroneous and the redress is being sought. The complaint must be received within fifteen (15) school days of the decision by the Grievance Committee. See section 2.16.2(4) for the requirements of written notification.
2. The President will have ten (10) school days to render a final decision on the case. A copy of the decision shall be distributed to both parties. The President's decision shall be final.

Maximum time line since grievance occurred: 155 school days.

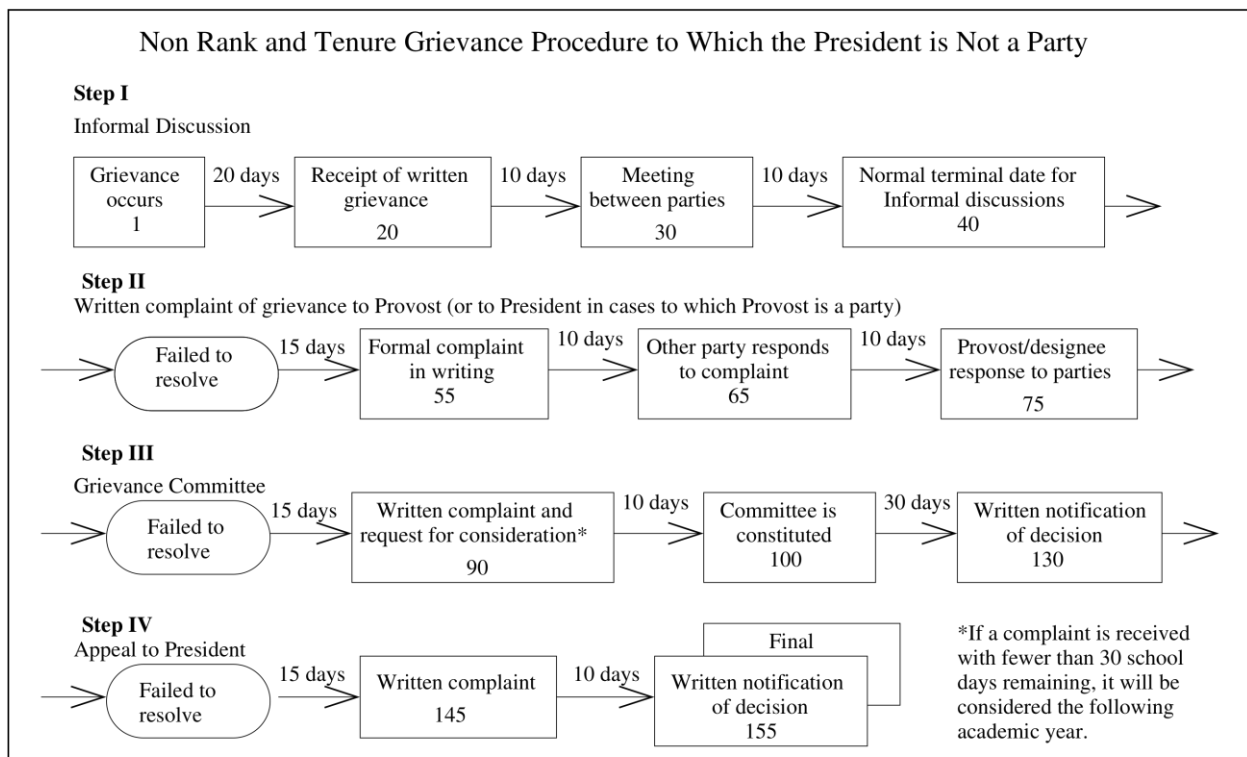


FIGURE 3. Section 2.16.4.1

2.16.4.2 Grievances To Which the President Is a Party That Allege Errors in Policy Not Involving the Rank and Tenure Review Process, Errors in Carrying Out Policies or Procedures Not Involving the Rank and Tenure Review Process, Violations of Academic Freedom Not Involving the Rank and Tenure Review Process, or Inadequate Consideration and/or Violation of Academic Freedom in Reappointment Recommendations and/or Decisions Not Involving the Rank and Tenure Review Process.

See Figure 4 for a time line of this section.

1. If the faculty member desires to file a grievance under section 2.16.4.2, he/she shall within twenty (20) school days of the alleged error submit a written petition to the

President stating the grounds upon which the faculty member bases his/her grievance and the redress sought.

The written notification, at this stage, can be very brief, indicating the nature of the alleged grievance and the parties involved. See section 2.16.2(4) for the requirements of written notification.

2. See section 2.16.2 for procedures that apply to all grievances.

Step I Informal Discussion

1. Following receipt of the written notification, the President shall call for a meeting between the parties to the grievance to take place not later than ten (10) school days after the written notification is received.
2. Resolution of the grievance through informal dialogue is encouraged. The formal grievance procedure is time consuming, costly, and often divisive and should only be used if informal channels of resolution have been exhausted.
3. In order to promote candor and informality and to maximize the opportunity for reaching a resolution, both parties to the discussion are encouraged to agree, at the outset, to sign a confidentiality agreement such as the following:

"Information that is shared during the informal discussion cannot be used by either party should the process proceed to the next stage."

If either party does not sign such an agreement, the discussions will be presumed to be open, that is, can be utilized by either party should the process proceed to the next stage. Both parties can, of course, at the conclusion of the informal discussion agree in writing to restrict the use in later stages of all or any parts of their discussions.

4. Informal discussions may continue until the grievance is settled or until the passage of ten (10) school days from the date of the first informal discussion, whichever occurs first unless otherwise provided by all parties in writing. See section 2.16.2(6).

Maximum time line since grievance occurred: 40 school days

Step II Appeal to the Board of Trustees

1. If no resolution occurs at Step I, the Faculty member may appeal to the Board of Trustees or to a committee thereof created at the discretion of the chairperson of the Board. The party must submit to the chairperson of the Board of Trustees a written complaint and the redress sought. The chairperson of the Board of Trustees will forward a copy of the written complaint and the redress sought to the President. The complaint and the redress sought must be received within fifteen (15) school days of the end of Step I. See section 2.16.2(4) for the requirements of written notification.
2. The Board of Trustees or a committee thereof created at the discretion of the chairperson of the Board will have thirty (30) school days for deliberation and to render a final decision on the case. A copy of the decision shall be distributed to both parties.

Maximum time line since grievance occurred: 85 school days.

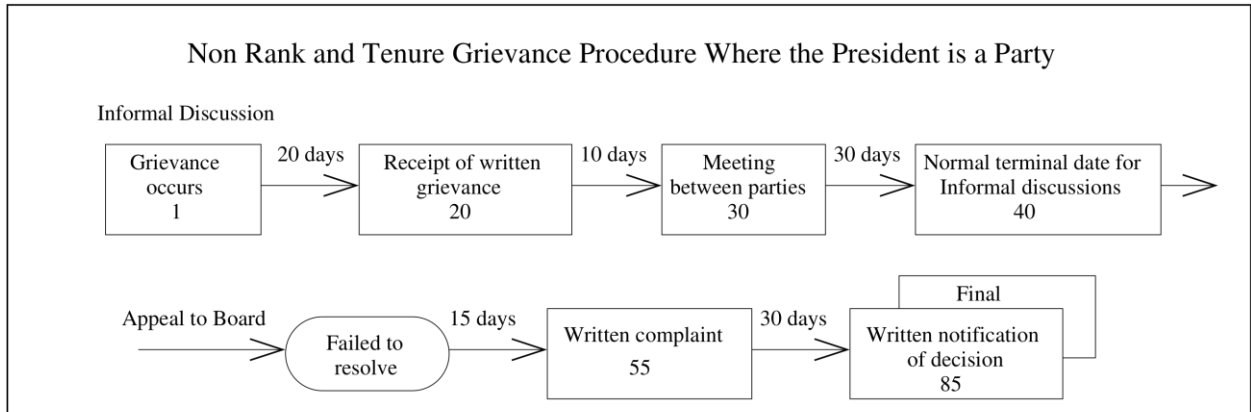


FIGURE 4. Section 2.16.4.2